

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEW MEXICO

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STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

v.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941 JEC-ACE

RIO CHAMA STREAM SYSTEM
Rio Gallina, Section 5

Subfile Nos: CHGA-003-0003A
CHGA-003-0003B
CHGA-003-0003C
CHGA-003-0003D
CHGA-003-0004A
CHGA-003-0004B
CHGA-003-0005

**STATE OF NEW MEXICO'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

COMES NOW the plaintiff State of New Mexico, *ex rel.* State Engineer, by and through his attorneys, and respectfully submits Proposed Findings of Fact and ConclusionS of Law in connection with the hearing before Special Master Vickie L. Gabin for disputed subfiles CHGA-003-0003A, CHGA-003-0003B, CHGA-003-0003C, CHGA-003-0003D, CHGA-003-0004A, CHGA-003-0004B and CHGA-003-0005.

PROPOSED FINDINGS OF FACT

1. The Court has jurisdiction over the parties and the subject matter herein.
2. Faye Davis is the owner of various tracts of land in Gallina, New Mexico for which she claims water rights as shown on the color subfile maps for Subfiles CHGA-003-0003A, CHGA-003-0003B, CHGA-003-0003C, CHGA-003-0003D, CHGA-003-0004A, CHGA-003-0004B and CHGA-003-0005.

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3. Faye Davis acquired the land mapped as Subfile CHGA-003-0004B in 1977.

4. Faye Davis acquired the land mapped as Subfiles CHGA-003-0003A, CHGA-003-0003B, CHGA-003-0003C, CHGA-003-0003D, CHGA-003-0004A and CHGA-003-0005 from Eugenio Sanchez and various other parties in about 1997.

5. Faye Davis' water rights claims in connection with the tracts of land described in Paragraph 2 above were consolidated for trial beginning January 28, 2003.

6. The tracts of lands described in Paragraph 2 above were all originally irrigated from the Placitas ditch.

7. The tracts of land described in Paragraph 2 above have not been irrigated for approximately twenty years.

8. The 2.25 mile long irrigation lateral that once supplied water to the tracts of land described in Paragraph 2 above has not been operational for approximately eighteen years.

9. Faye Davis has made minimal or no effort to keep the 2.25 mile long irrigation lateral operational during the last eighteen years.

10. There is no evidence that Faye Davis' predecessors in interest made any effort to keep the 2.25 mile long irrigation lateral operational prior to the time they sold their interest in the property described in paragraph 4 above to Ms. Davis in about 1997.

11. Faye Davis' and her predecessors in interest failure to irrigate the tracts of land described in Paragraph 2 above for approximately twenty years represents an unreasonable period of time not to put water to beneficial use.

12. There has been no shortfall in the historic water supply in the Gallina area during the last twenty years, and in general the amount of annual precipitation has been above average.

13. Faye Davis' and her predecessors in interest failure to put water to beneficial use for an unreasonable period of time gives rise to a legal presumption that any water rights appurtenant to the claimed tracts were abandoned.

14. Faye Davis failed to rebut a presumption of abandonment by proving any factors that would excuse the failure to put water to beneficial use on the claimed tracts for approximately 20 years.

15. Financial limitations do not excuse the failure to put water to beneficial use for an unreasonable period of time.

PROPOSED CONCLUSIONS OF LAW

1. Any water rights appurtenant to the tracts of land owned by Faye Davis and mapped as Subfiles CHGA-003-0003A, CHGA-003-0003B, CHGA-003-0003C, CHGA-003-0003D, CHGA-003-0004A, CHGA-003-0004B and CHGA-003-0005 were abandoned.

2. There are no water rights appurtenant to the tracts of land in Gallina, New Mexico mapped as Subfiles CHGA-003-0003A, CHGA-003-0003B, CHGA-003-0003C, CHGA-003-0003D, CHGA-003-0004A, CHGA-003-0004B and CHGA-003-0005, and those tracts should be classified as "no right" or without water rights.

DATED: May 2, 2003


Respectfully submitted,



EDWARD G. NEWVILLE
Special Assistant Attorney General
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150

CERTIFICATE OF SERVICE

I certify that a copy of New Mexico's Proposed Findings of Fact and Conclusions of Law was mailed to the following persons on May 2, 2003.



Edward G. Newville

Special Master Vickie L. Gabin
USDC-DCNM
P.O. Box 2384
Santa Fe, NM 87504-2384

Darcy S. Bushnell, Esq.
Adjudication Staff Attorney
USDC-DCNM
333 Lomas Blvd. NW, Box 270
Albuquerque, NM 87102-2272

Karla McCall, Data Manager.
1315 Sagebrush Dr. SW
Los Lunas, NM 87031

Bradley S. Bridgewater, Esq.
David W. Gehlert, Esq.
USDOJ-ENRD
999 18th St., Suite 945
Denver, CO 80202

Mary E. Humphrey, Esq.
P.O. 1574
El Prado, N.M. 87529-1574

John W. Utton, Esq.
P.O. Box 271
Albuquerque, NM 87103-0271

Fred J. Waltz, Esq.
P.O. Box 6390
Taos, NM 87571